

FEB 24 2022

Appeal of Planning Commission Decisions to the Corvallis City Council  
Community Development Planning Division

I, Ronald W. Hall, residing at 4448 NW Honeysuckle Dr. in the City of Corvallis, do hereby appeal the decisions of the Corvallis Planning Commission with regard to "The Preserve," cases ZDC-2021-02 and SUB-2021-04. I am an affected party because my property directly adjoins the proposed construction site and the proposed extension of NW Goldfinch Dr. Further, the applicant has applied to destroy large trees on my property.

The reasons for appeal are listed below. Further details are contained in the written and verbal testimony received by the Planning Commission and hereby incorporated by reference.

#### Procedure

1. Because the applicant is a member of the Planning Commission, the City Council should review the decisions and recommendations of the Commission, in order to avoid any appearance of favoritism or conflict of interest. He has ongoing relationships with each of the Commissioners. This is evidenced by his being referred to by first name only during the formal Commission hearing, unlike any other participant. His cooperation and support are needed by each of the Commissioners to conduct the business of the Commission. Only one of the commissioners acknowledged this conflict of interest during their disclosures. The Commissioners should have recused themselves from making these decisions, but only one did.
2. The Commission hearing process was highly biased in favor of the applicant. The applicant was allowed unlimited time to make his presentation. His presentation was by video. His staff were also allowed to extensively participate by video. He was allowed to make extensive use of visual aids to make his presentation. By contrast, all other participants were allowed only 3 minutes to speak, no visual aids were possible, and presentations were audio only.
3. The Planning Commission did not deliberate in its usual manner. Though the site is complex with many concerning issues, in conflict with the Comprehensive Plan and contains code violations, the "deliberations" consisted of one commissioner making one brief comment about the development. None of the other 3 voting commissioners said anything about the applications.

#### Zoning Application

1. **The City has already made the legal determination that the property is not necessary to fulfill City housing needs.** The Comprehensive Plan identifies the property as eligible for RS-1 zoning. Per the Land Development Code 3.10.10d, one of the conditions that any property must satisfy to be eligible for the RS-1 Zoning is that, "The property is not necessary to satisfy the City's buildable lands needs." The applicant's arguments with regard to need are therefore null and void and should not have been considered in the Planning Commission's decision.
2. **The City's recent decisions and projections continue to show no need for this housing at the RS-6 density.** The Planning Commission and/or City Council have already approved land use cases that will yield more than 3600 new dwellings. This is more than enough to house the City's projected growth through the year 2036. The City has no need for these houses. The Staff

Report concludes otherwise based on a 6 year old LIDR, ignoring the work done on the 2020 LIDR and subsequent approved developments. The City does have a need for affordable housing but the applicant frankly states that these houses will NOT be affordable.

3. **The density of housing that would be allowed under the requested zoning does not adequately protect the significant natural features.** The applicant proposes to develop every square foot of acreage that can legally be developed under MADA. At the Planning Commission hearing, the applicant argued that the density of the tentative subdivision plat should be thought of as 41 lots on 42 acres, or roughly 1 lot per acre. This argument is specious because development is legally precluded on most of the property. There is no need to annex or develop the property to achieve preservation of the undevelopable portion.
4. **To protect the natural features and to make wildfire less likely, the Comprehensive Plan calls for zoning of RS-1 (1 acre lots) on this site.** This is much denser than the existing zoning, UR-5 (5-acre lots). The developer ignores the above twin goals and is requesting much denser development, RS-6 (6 lots per acre) with RS-9 (9 lots per acre) features. Some lots will be less than 1/9<sup>th</sup> of an acre! By way of comparison, the largest lot in this development would be about the same size as the smallest lot in the surrounding community, all other new lots being smaller than existing nearby lots. Per the Comprehensive Plan 40.1.1 "To assist with natural features protections, at the edge of the Urban Growth Boundary and noted on the Comprehensive Plan Map (consistent with the locational provisions of the RS-1 Zone), a density as low as 0.5 - 2 units/acre may be appropriate." If annexed, the property should be rezoned RS-1, the only designation consistent with the Comprehensive Plan and the plethora of significant and "highly protected" natural features that would be destroyed by more dense housing. The policies and standards of the 2004 Comprehensive Plan amendment adoption and the subsequent inclusion of the Extra Low Density Residential (RS-1) zoning District in the 2006 revision of the Comprehensive Plan, including the specific Comprehensive Plan Map, call out specifically the use of the Extra Low Density Residential zoning with the parcel at issue here. The requirement is clear and unambiguous. The parcel at issue here is only eligible for Extra Low Density Residential (RS-1) zoning if annexed. The parcel is not eligible for RS-6.
5. **High density housing (including RS-9 features) is proposed at the wildland urban interface (WUI), adjacent to the McDonald Forest, precisely at a time when the growing risk of wildfire at the WUI has become so clearly evident in Oregon and throughout the West.** This significantly increases the risk of a fire. At the same time, the development is too far from the nearest fire station per Livability Indicator and further than the 5.3 minute standard set by the Corvallis Fire Dept. Councilors should worry that their decisions could imperil more than Timberhill and the McDonald Forest, if this development is approved. The City Council's own Climate Action Plan emphasizes, "Limit new development in high-risk areas," yet this development does the opposite. Even though the applicant during his testimony to the Planning Commission spuriously claimed this development reduces wildfire risk, the Comprehensive Plan clearly indicates otherwise:

10.7.7 “Standards and regulations for development in the Urban Fringe shall be modified to require new residential development to maintain a sufficient fire break to minimize hazards from wildland fires.”

4.6.k “There are hillside areas within the Urban Growth Boundary that contain buildings and wildland vegetation. These areas create an increased opportunity for uncontrolled wildfire. The slope and aspect of the hillside increase the potential threat of wildfire to life and these buildings.”

4.6.2 “Development on hillsides shall not endanger life and property nor land and aquatic resources determined to be environmentally significant.”

14.4.3 “As urbanization approaches the Urban Growth Boundary, development shall provide a buffer or transition area between the urbanizing area and agricultural or forest resource uses outside the Urban Growth Boundary.”

Numerous publications, including Radeloff et al. 2018. Rapid growth of the US wildland-urban interface raises wildfire risk. Proceedings of the National Academy of Sciences of the United States of America, confirm that building near the forest significantly increases wildfire risk. The publication also documents that blown embers can ignite fires as far as 2 miles away. Thus, your decision to allow this zoning could imperil a significant portion of northern Corvallis, in addition to the McDonald-Dunn Research Forest.

6. **Only a few of the less important Livability Indicators spelled out in the Code are fully met.** The disadvantages far outweigh the advantages. Please see the detailed written testimony to the Planning Commission of Mr. Woodworth and Dr. Ryan. The applicant admits that this development would not meet most of the Livability Indicators. The law requires you to deny this application on this basis alone.

#### **Tentative Subdivision Plat Application**

1. **The arborist’s report is inaccurate.** The arborist’s report “missed” more than 2 dozen trees, some of them quite large, that will likely be destroyed by this development. Maps showing the “missed” trees have been submitted to the Planning Department. Further, the report is based on a former application which is significantly different from the one before the Council. The road placement and the placement and number of lots has changed, changing which trees will be destroyed by this development. The Council should have accurate information on which to base this important decision. An accurate arborist report should be required by the Council.
2. **The development misnamed “The Preserve” will destroy more than 160 trees, some older than 100 years, several of which are on private property not belonging to the developer.** The developer’s own hired expert advises against this. In the Phase 1 (Due Diligence) Investigation, page 6, his expert states, “To reduce the risk of further [soil] instability that would affect the proposed development, we recommend leaving as many mature trees as is feasible.” Since all of the new homes are to be built on slopes identified as having some soil movement already, it seems entirely impractical to build on slopes denuded of most of the existing mature trees. The applications should be denied on this basis alone.

3. **The tentative subdivision plat clusters the 41 lots around sensitive riparian zones that form the headwaters of Dixon Creek and will destroy rare and valuable oak savannah habitat.** Per the City of Corvallis, "Only 2% of prairie and oak savanna habitat in the Willamette Valley remains, making restoration of still functioning properties critical. While Benton County still contains a large corridor of remnant oak savanna and prairie habitat restoration is needed to increase and enhance this habitat type." <https://www.corvallisoregon.gov/parksrec/page/chip-rossarea-oak-habitat-restoration-project>. These applications should be denied because this development will contribute directly by "mass grading" and indirectly through wildfire to further destruction of this important habitat.
4. **The proposed cuts and fills exceed those permitted by LDC 4.14.70.04.c.1. and none of the exceptions contained in the LDC are applicable.** The applicant admits exactly this. While the applicant states he could comply with the code, he says he will not because it would be "difficult." The applicant's argument in favor of this exemption was evidently motivated solely by his desire to improve the profitability of the venture. The vague Directors Order on which the applicant relies is not above the law. Do not approve the subdivision application which is in violation of the law.
5. **Private lots contain land zoned for conservation.** Simply informing homeowners that they cannot use part of their backyard, as the staff suggests, is obviously inadequate. This is unenforceable and makes a mockery of conservation. The applicant should be required to exclude conserved land from private lots.
6. **Trails for forest access will be built, if at all, at the developer's unfettered discretion.** The developer says he will build trails, if he does at all, only after all lots are sold. I believe that if the developer truly intended to improve the new trails (replacing existing trails which he will destroy), he would have committed to that in his application. He did not. Not improving trails means that they will not be safely usable during about half of the year when rain is common. Maintaining community all-season access to the McDonald Forest should be a condition of approval. Conditions contained in the Staff Report adopted by the Planning Commission are vague regarding what needs to be done to "construct" a trail. I believe a trail comparable to those that currently exist that allow all-weather safe access should be required as part of Phase A so that public access is not impaired.
7. **The clustered lots on the western portion will further overload emergency evacuation routes that were already shown to be inadequate in this area during the 2014 fire.** Climate change and this development eliminating much of the buffer between urbanized areas and the forest increases the risk of wildfire. This development will mean more people will be trying to evacuate through already inadequate evacuation routes. The applicant's response at the Planning Commission hearing was that eventually there may be adequate evacuation routes. That will be of little solace to those fleeing forest fire in the next few years.
7. **The applicant should be required to mitigate wildfire risk.** The applications should not be approved unless and until the applicant can demonstrate compliance with Oregon Fire Code,

Chapter 5 and demonstrate creation of a Forest Conservation Zone under Oregon Forest Practices Act. In addition, no highly combustible vegetation (per the City of Ashland, OR code) should be allowed to be planted on the site (per Comprehensive Plan at 4.6.7.1), outdoor fires such as fire pits should be prohibited and lots should be placed no less than 200 ft from the McDonald Research Forest to maintain at least a small buffer to help prevent a conflagration.

8. **The new intersection of the proposed extension of NW Goldfinch with NW Honeysuckle will be hazardous for cars, pedestrians, and cyclists.** The new road (extension of Goldfinch) proposed as part of this development will lead directly to a broad driveway across Honeysuckle. The homes at the end of that driveway are downhill and difficult or impossible to see from Honeysuckle. Thus, the new road will lead car traffic to descend this driveway. A condition of approval should be a yellow diamond sign indicating, "Private Driveway, No Turn Around." That sign should be placed on the south side of Honeysuckle facing north towards the extension of Goldfinch. A STOP sign on the Goldfinch extension where it intersects Honeysuckle should also be a condition of approval.
9. **The site contains numerous landslide areas.** These include areas shown in the application and additional areas shown on the recently updated Oregon Landslide Hazard Maps. Building lots in this area subjects the City and the developer to liability. Asking the developer to insure against this risk is only an invitation to a lawsuit the City cannot afford. How long will the applicant maintain liability insurance? The Comprehensive Plan at 4.7.1 requires mitigation but none is provided. The applicant should be required to mitigate this risk and indemnify the City in perpetuity. There is not even a condition that lot purchasers be notified that the land they are purchasing is in an identified landslide hazard zone. The Council should require as a condition of approval notification of putative lot purchasers and recordation in the title. This would only be fair to purchasers and would partially mitigate liability risk for the City.
10. **The danger posed by the Corvallis Fault, which runs through this property (see [https://www.researchgate.net/figure/Generalized-geologic-map-of-Benton-County\\_fig3\\_267999650](https://www.researchgate.net/figure/Generalized-geologic-map-of-Benton-County_fig3_267999650)), is not addressed in the application.** Per Bob Yeats, OSU Geology Professor Emeritus, "Ignoring the fault in development plans **would** endanger the lives of hundreds of citizens living in north Corvallis." (emphasis added) (Gazette Times, Feb. 2, 2017). No provision has been made to mitigate damage from fault movement as required by the Comprehensive Plan at 4.7.1, nor are lot owners to be warned of the danger they will likely encounter. The applicant should be required to mitigate this risk and indemnify the City in perpetuity. The Council should require as a condition of approval notification of putative lot purchasers and recordation in the title. This would only be fair to purchasers and would partially mitigate liability risk for the City.
11. **Planned stormwater retention facilities are inadequate.** The eastern stormwater facility has been placed in a riparian zone where water flows year-round. If any of the test pits had been located near the stormwater retention facilities, they would have shown how ill-advised these retention facilities are. Test pit 10 is the closest to the eastern retention facility and was seeping water when tested during the summer. A significant storm would easily overwhelm a facility

already largely or completely filled with water. Homes on Honeysuckle and Goldfinch already regularly experience significant amounts of stormwater flowing onto their property. With more impervious surfaces, this situation can only worsen, creating liability for the developer and the City and great hardship for existing residents.

12. **The plat is inconsistent with the Comprehensive Plan because riparian zones are not adequately protected.** The lots, eastern stormwater retention facility and the new road will largely obliterate these important natural habitats and the wildlife that depend upon them. Building homes on a riparian zone destroys the ecosystem and will lead to foundational and other problems for homes built there (see the evaluation of the hydrologist Mr. Beschta and my written and photographic testimony). Comprehensive Plan Policy 4.10.3 states, "Significant drainageways shall be kept in a natural state to protect tree lines, maintain their natural functions, and enhance native plant species, to the maximum extent practicable." Wetland B is severely encroached upon by lots 28, 31, 32, 33, 34, 35 and 36 per Attachment J. Corvallis is required by State law to update its inventory (see my last page of written testimony). The applicant's response, that if the riparian zone was missed in the 2003 survey, it does not exist, is obviously out of touch with reality. A new Natural Features Inventory would confirm these findings and should precede any permitting. Removing vegetation from riparian zones leads to water overheating threatening cutthroat trout and lamprey and other species using the lower areas of the Dixon Creek watershed, in violation of Comprehensive Plan 4.13.1.
13. **If 'Wetland C' is actually a spring (unknown), simply placing a pipe under NW Goldfinch Drive may result in destabilization of Goldfinch over time.** It could degrade and require extensive and expensive repairs, literally a sunk cost for the City. The problem is exacerbated and the risk great because of buried subsurface rubble basalt mixed with sand and mud turbidites of the Siletz formation. The subdivision application should not be approved without adequate information, much more than is provided in the application.
14. **There is no submitted plan to preserve and protect protected vegetation, as required in LDC 2.6.30.06 e. 13.** Per the application, the entire site is "encumbered" by significant protected vegetation. The Comprehensive Plan Policy 4.2.2 states that "Natural features and areas determined to be significant shall be preserved, or have their losses mitigated, and/or reclaimed." There are no plans to preserve, mitigate losses or reclaim significant natural features on the 32 acres of the site zoned for residential development RS-6. There is no submitted plan to preserve and protect protected vegetation, as required in LDC 2.6.30.06 e. 13. The Council should deny these applications on this basis alone. If these applications are to be approved, a condition should be that a Significant Vegetation Management Plan be submitted for Council approval before any building permits are issued.
15. **The application does not address protection for federally protected species and species of concern or any of the ODFW conservation species.** Two Federally listed and Oregon listed Endangered Species and one Threatened Species have been identified in areas that include the parcel in this annexation request: Fenders Blue butterfly (endangered); Taylor's Checkerspot butterfly (endangered); Nelson's Checkermallow (threatened). Federal US Fish and Wildlife and

Oregon Department of Fish and Wildlife Endangered Species websites include interactive maps that show the parcel to be located in the habitat range for these species and for one, Fender's Blue, represent a significant portion of its limited habitat range. My understanding of the Endangered Species Act is that the entity responsible for approving the development of a protected site is also responsible for defending that decision upon notification that a potential violation has or could be present. Further, ODFW conservation strategy species that have been observed on the property include Acorn woodpecker, Chipping sparrow, Olive sided flycatcher, Western bluebird, Western gray squirrel, White breasted nuthatch, and Yellow breasted chat. The applications should be denied on this basis alone. If the applications are approved, a condition should be imposed to fell and remove trees outside of the breeding season to avoid harm (injury, death, or harassment) to nesting birds, eggs, or young.

16. **Protect the "Highly Protected" significant vegetation.** The site contains Highly Protected Significant Vegetation (HPSV), as well as Partially Protected Significant Vegetation (PPSV-1). There are mature, native Oregon white oak (*Quercus garryana*), Bigleaf maple (*Acer macrophyllum*), and Pacific madrone (*Arbutus menziesii*) trees. Several of the stands are noted in the Corvallis Tree Grove Assessment, which identifies "trees with scenic, aesthetic, and other functional values." Many of the oak trees are more than 100 years old. The property is an oak savannah and oak woodland habitat, a rare and endangered habitat type in the Willamette Valley. The Benton County Habitat Conservation Plan states, "Benton County encompasses some of the highest quality remaining prairie and oak savanna, wetlands, and forest in Oregon." The functional value of oak trees is called out in the Corvallis Tree Grove Technical Report; "The oak groves on the Corvallis hills, for example, are a significant part of what makes Corvallis the special place that it is." The City and County have placed importance and protections on the trees and habitat of the site. I urge you to not make these empty words but rather to do your part in protecting this ecosystem by denying these applications.
17. **The application calls for the destruction of greater than 60 trees in the Right of Way and on private property outside of the Right of Way to connect the extension of Goldfinch to Honeysuckle.** This wholesale destruction of large, old trees should not be allowed. But if the development goes forward despite this, the developer should be required to replant similar trees in this area. The application calls for destruction of these trees but calls for replanting of not one single tree in this area.
18. **The Comprehensive Plan at 4.6.c. contains a warning about just such a development as is proposed here.** "Hillside development changes the landscape and results in increased runoff and increased downstream peak flows. Changes generally include the loss of trees and shrubs that intercept and re-evaporate rainfall plus hillside cuts that prematurely bring ground water to the surface. Poor development practices on hillsides can require increased public expenditures for flood and erosion control and storm water management."
19. **LDC 4.13.10. b.1. specifically provides that Corvallis wishes to "minimize harm to natural systems from their use as a stormwater facility".** LDC 4.13.40. b.1.b) requires "a 25-ft. setback/buffer around the upland edge of locally and nonlocally protected Wetlands".

(emphasis added) No such setback/buffer is included in the application. Attachment L shows wetlands closer than 25 ft. to lots 16, 31, 32, 33, 34, 35, the new road and the eastern stormwater retention facility. As noted above, there is an additional Wetland not noted in previously surveys without the required setback. In addition, as noted above, there is an additional and larger unmapped riparian zone without the required setback. The subdivision application should be denied on this basis alone.

20. **The annexation and zoning applications includes areas planned for open space (Attachment D) but no Comprehensive Plan Map Amendment is submitted as required by the Code.** LDC 2.6.30.06 d. states, "If the Annexation proposal includes areas planned for open space . . . , the Annexation request shall be accompanied by a Comprehensive Plan Map Amendment as outlined in "1," and "2," below." The applicant should be required to comply with the law.
21. **The traffic impact analysis (TIA) submitted by the developer is not adequate for the subdivision.** Per the City Planning Dept., this site could contain 60 dwellings on the 41 lots, yet the analysis is for only 45. The TIA does not address at all the increased traffic on Aspen in the mornings for children who are walking, cycling or being driven to school. Because Aspen will be the most direct route to school for the children dwelling in this development, that is a major shortcoming. Aspen is already the source of multiple high traffic and child safety complaints, especially before and after Bessie Coleman is in session. The TIA contains no supporting on-the-ground data collection or communication with City officials to ascertain existing traffic patterns and known issues. The Council should demand accurate information on which to base this important decision.
22. **I am concerned that much of the soil on which houses and the road are to be built are not suitable for such structures.** The Phase 1 (Due Diligence) Investigation, page 7 (pdf 326), states, "Such soils have high expansion potential and will typically shrink or swell with seasonal changes in moisture content. Shrinkage or swelling of the subgrade soils may cause movement (heave or differential displacement) of the foundations, sidewalks, slabs, and other deformation-sensitive structures. In pavement areas, shrinkage and swelling may decrease pavement subgrade support and induce cracking in the pavement surface. Therefore, such soils are not suitable for structural subgrade and will require removal if encountered during construction." Who will monitor whether such soils are encountered? Who will monitor their complete removal during construction? Who will be responsible if homes and other structures crack because such soils were not completely removed?
23. **There is guidance in the Comprehensive Plan (4.6.d.) regarding whether this development should be approved by you;** "There are hillside areas within the Urban Growth Boundary that are prone to landslides. These areas are also associated with poor drainage, shallow subsurface flow of ground water and springs, and high susceptibility to erosion. Landslides can destroy roads and buildings and wildlife habitat, and adversely affect water quality and fishery potential within and downstream of the Urban Growth Boundary. Mass movement has not resulted in any major loss of life or property thus far, because there has not been significant development in




hillside areas susceptible to problems." **All** of the conditions noted above have been found by the applicant on this site.

For the reasons above, I appeal the decisions of the Planning Commission with respect to the applicant's zoning request and tentative subdivision plat. I further believe that many of the same issues argue against annexation of the property. If the applications are denied, this land could still be developed as part of Benton County. That is what Mr. Boeder bought, and that is what he should be allowed to do. Compared with the applications, the current zoning would preserve more of the natural habitat, reduce the risk of wildfire and mitigate emergency evacuation and traffic concerns. City liability for landslides, earthquakes, unstable soil conditions, endangering endangered species and flooding onsite and downhill from the site would be entirely avoided.

Lastly, the City Council should carefully consider what their vote means to this community about its stated goals and values. Do the Livability Indicators matter, or are they meaningless words on paper? Does the Comprehensive Plan matter or is it political statement to be disregarded when inconvenient? Is the Land Development Code the law of the land or can it be ignored when desired? We ask that you uphold the values of the community as expressed in these carefully crafted documents.

I thank you for your thoughtful consideration of each of the serious concerns above.



Ronald W. Hall



Date